

Agenda Item #10.B.

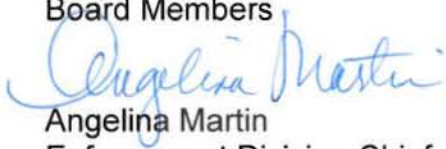


STATE AND COUNTY OF CALIFORNIA BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
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DATE: August 22, 2011

TO: Board Members

FROM: 
Angelina Martin
Enforcement Division Chief

SUBJECT: Proposed Regulatory Action to Implement Uniform Standards Regarding
Substance-Abusing Healing Arts Licensees and Revise Disciplinary
Guidelines

STATEMENT OF ISSUES

The Board is mandated to protect consumers from licensees who practice in an unsafe, incompetent, or impaired manner. In accordance with Business and Professions (B&P) Code, sections 2841.1 and 4501.1, protection of the public shall be the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions.

B&P Code section 315 (Senate Bill 1441, Chapter 548, Statutes of 2008) established a Substance Abuse Coordination Committee (SACC) to develop uniform standards for substance-abusing healing arts licensees. All healing arts boards are required to use those standards.

Government Code section 11425.50(e) requires that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340). The Board's Disciplinary Guidelines (Guidelines) are established in regulation and were last revised effective October 29, 2008.

Existing regulations relative to the Board's Guidelines must be revised to implement the uniform standards adopted by the SACC and to clean up other sections of the Guidelines (see Attachments A and B).

BACKGROUND AND SUBJECT REVIEW

The SACC was required to establish uniform and specific standards in sixteen areas by January 1, 2010.

The SACC was comprised of the Executive Officers (EO) of all healing arts boards, the Director of the Department of Consumer Affairs (DCA) and the State Medical Director of the Department of Drug and Alcohol Programs. The Board's EO was a member of the SACC and attended several meetings throughout the year. Additionally, a work group was

established to assist the SACC. Marilyn Kimble, Probation Monitor, participated as a member of the work group and also attended several group and SACC meetings throughout the year.

On November 16, 2009, the SACC adopted sixteen uniform standards to be used by all healing arts boards.

On February 17, 2010, SB 1111 was introduced by Senator Negrete McLeod and sponsored by DCA. The bill included legislative provisions needed to implement the uniform standards requiring legislation. However, SB 1111 failed to make it out of the Senate Business, Professions and Economic Development Committee.

The DCA Director encouraged the boards to promptly implement those standards that do not require legislation or regulatory changes. He also requested that the boards develop proposed statutory and/or regulatory changes, as needed, to fully implement the standards.

Accordingly, Board staff worked on proposed amendments to the vocational nursing (VN) and psychiatric technician (PT) regulations regarding its Guidelines to include the uniform standards and to clean up other sections of the Guidelines. In the meantime, the Board was advised that the DCA established a SACC Subcommittee to review standard #4 relative to required drug testing. A review of this standard was deemed necessary due to numerous concerns expressed during the public meetings regarding the frequency of testing required by this standard.

A draft of proposed regulatory language to implement the uniform standards was developed by the Board and presented at its May 19, 2010 Board Meeting. However, no action was taken by the Board pending the outcome of the SACC's review of standard #4 and possible revisions to that standard.

The SACC subcommittee met on August 4, 2010 and March 9, 2011. Public comment was received during these meetings. The subcommittee adopted revisions to Uniform Standard #4 which include a new testing frequency schedule, exceptions, other drug standards, petitions for reinstatement and outcomes. On April 11, 2011, the SACC adopted the Subcommittee's recommendations (see Attachment C).

On July 22, 2011, the Notice of Proposed Regulations was published in the California Regulatory Notice Register. A copy of the Notice was mailed to all interested parties on the Board's mailing list. The proposed language was mailed to those individuals who requested a copy.

On September 6, 2011, a public hearing will be held at the Engineers' Board Hearing Room, 2535 Capitol Oaks Drive (Third Floor), Sacramento, California 95833. Should the Board receive comments during the public comment period or the hearing that warrant substantive revisions to the proposed regulatory language, a 15-day public comment period will be conducted relative to any modified text.

Recommendations:

1. The Board approve the regulatory proposal to amend Division 25 of Title 16, California Code of Regulations, to amend sections 2524 (VN Regulations) and 2579.10 (PT Regulations).
2. Direct staff to submit the rulemaking file to the DCA and to the Office of Administrative Law (OAL) for final approval; and
3. Authorize the Executive Officer to make non-substantive changes as are required by the Director of the DCA and the OAL.

Attachment A	Proposed Regulatory Language for Implementation of Uniform Standards and Revision of Disciplinary Guidelines
Attachment B	Proposed Revised Disciplinary Guidelines
Attachment C	Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (dated April 2011)
Attachment D	Notice of Proposed Changes
Attachment E	Initial Statement of Reason

Agenda Item #10.B. – Attachment A

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

Vocational Nursing Regulations

California Code of Regulations, Title 16, Division 25, Chapter 1, Article 4, is amended to read:

2524. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~ide~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. ~~6/19/07~~6/20/11), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding subsection (b), ~~a~~ deviation from ~~thesethe guideline~~ Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.
- (c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 2854, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 2875, 2876 and 2878, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e), and 11500, Government Code.

Board of Vocational Nursing and Psychiatric Technicians

SPECIFIC LANGUAGE

Psychiatric Technician Regulations

California Code of Regulations, Title 16, Division 25, Chapter 2, Article 4, is amended to read:

2579.10. Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall ~~ide~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. ~~6/19/07~~6/20/11), which are hereby incorporated by reference. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding subsection (b), Deviation from ~~thesethe guideline~~Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee for purposes of Section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.
- (c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 4504, Business and Professions Code; and Section 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 729, 4520 and 4521, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20, 11425.50(e), and 11500, Government Code.

State of California
Board of Vocational Nursing
and Psychiatric Technicians

DISCIPLINARY GUIDELINES
AND
UNIFORM STANDARDS RELATED
TO SUBSTANCE ABUSE

Revised ~~June 19, 2007~~ June 20, 2011
(Regulations Effective ~~October 29, 2008~~ [insert date])



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INTRODUCTION

Business and Professions Code sections 2841.1 and 4501.1 mandate that protection of the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

To facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known, the Board adopted these Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

Disciplinary Guidelines

The ~~guidelines~~Disciplinary Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

While recognizing the concept that administrative law judges must be free to exercise their discretion, the Board requests that ~~these~~the guidelinesDisciplinary Guidelines be followed to the extent possible and that any departures be noted and explained in the Proposed Decision.

The Board requests that matters in extenuation and mitigation, as well as those in aggravation, be fully considered and noted in the Proposed Decision. Of primary importance is the effect ~~the respondent's~~ Respondent's conduct had or could have had on the health, safety, and welfare of California consumers.

Uniform Standards Related to Substance Abuse

Pursuant to Business and Professions Code section 315, the Department of Consumer Affairs (Department) Substance Abuse Coordination Committee formulated Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (rev. 4/2011). The Board's Uniform Standards not otherwise incorporated into the Standard Conditions are found in Conditions of Probation 25, 26, 27, 28, 29, and 30. The Uniform Standards apply when dealing with substance-abusing licensees.

If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance abusing licensee. If the licensee does not rebut that presumption, then Conditions of Probation 25, 26 and 27 shall be imposed unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

Conditions of Probation 28, 29, and 30 shall be considered where the licensee is found to be a substance abuser, and, if the nature and circumstances of the particular case warrant, shall be imposed as probation conditions.

The Board may impose more restrictive conditions, if necessary, to protect the public.

REGULATORY AUTHORITY

***California Code of Regulations
Title 16, Division 25***

Section 2524 (VN) & Section 2579.10 (PT):

Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the Board shall ~~consider~~ utilize the disciplinary guidelines entitled “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” (Rev. ~~6/19/07~~6/20/11), which are hereby incorporated by reference. The Uniform Standards apply to a substance abusing licensee.

- (a) Notwithstanding subsection (b), ~~a~~ deviation from these guidelines—the Disciplinary Guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example; the presence of mitigating or aggravating factors; the age of the case; evidentiary problems.*
- (b) If the conduct found to be a violation involves the use of drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, then the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.*
- (c) Notwithstanding the Disciplinary Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the Business and Professions Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.*

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given disciplinary action, the following factors should be considered:

- *Nature and severity of the act(s), offense(s), or crime(s) under consideration.*
- *Actual or potential harm to the public.*
- *Actual or potential harm to any patient.*
- *Overall disciplinary record.*
- *Overall criminal actions taken by any federal, state or local agency or court.*
- *Prior warnings on record or prior remediation.*
- *Number and/or variety of current violations.*
- *~~Mitigation~~ Mitigating or aggravating evidence.*
- *In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.*
- *Time passed since the act(s) or offense(s) occurred.*
- *If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.*
- *Cooperation with the Board and other law enforcement or regulatory agencies.*
- *Other rehabilitation evidence.*

***SUMMARY LISTS OF ~~THE~~
STANDARD &AND OPTIONAL
CONDITIONS OF PROBATION***

Standard Conditions of Probation (1 – 14):

The Standard Conditions of Probation (1-14) are those conditions of probation which will generally appear in all cases involving probation as standard terms and conditions.

1. *Obey All Laws*
2. *Compliance with Probation Program*
3. *Submit Written Reports*
4. *Notification of Address and Telephone Number Change(s)*
5. *Notification of Residency or Practice Outside of State*
6. *Meetings ~~With~~with Board Representative(s)*
7. *Notification to Employer(s)*
8. *Employment Requirements and Limitations*
9. *Supervision Requirements*
10. *Completion of Educational Course(s)*
11. *Maintenance of Valid License*
12. *Cost Recovery Requirements*
13. *License Surrender*
14. *Violation of Probation*

Optional Conditions of Probation (15 -- 25):

The Optional Conditions of Probation (15-25) are those conditions of probation which address specific circumstances of the case.

- *If relevant to the violation, any of the ~~optional conditions~~ Optional Conditions may be included in the probation requirements.*
- *If the offense involves ~~alcohol and/or drugs~~ substance abuse, including alcohol, Conditions-Optional Conditions 19- 2322 are usually required (in addition to the Standard Conditions 1 - 14 and, if the licensee is found to be a substance-abuser, Uniform Standards Conditions 26-28). Optional Conditions 16-18, 23, and Conditions 29-31 are also recommended, if relevant.*
- *If ~~the respondent's~~ Respondent's license has been or will have been expired for over four (4) years by the time a decision is rendered, ~~the~~ Respondent shall be required to take and pass the licensure examination (Condition 24).*
- *If the case involves mental illness, Conditions 16-18 are recommended.*

15. *Suspension of License*
16. *Examination by a Physician*
17. *Psychiatric/Psychological Evaluation*
18. *Psychotherapy*
19. *Rehabilitation Program*
20. *~~Chemical Dependency~~ Addictive Behavior Support & Recovery Groups*
21. *Abstain from Controlled Substances*
22. *Abstain from Use of Alcohol and Products Containing Alcohol*
23. *Submit Biological Fluid Samples*
24. *Take and Pass Licensure Examination*
25. *Restrictions on Licensed Practice*

SUMMARY LISTS OF
UNIFORM STANDARDS – CONDITIONS OF
PROBATION

Required Conditions of Probation (26 -- 28):

The following Uniform Standards -- Conditions of Probation shall be imposed as probation conditions in cases where Respondent is placed on probation due to substance abuse.

26.Submit to Drug Testing

27.Positive Drug Test

28.Major and Minor Violations

Optional Conditions of Probation (29 -- 31):

The following Uniform Standards -- Conditions of Probation shall be considered and, if the circumstances of the case warrant, shall be imposed as probation conditions.

29.Clinical Diagnostic Evaluation

30.Group Meetings with Qualified Facilitator

31.Worksite Monitor

DISCIPLINARY GUIDELINES

STANDARD CONDITIONS OF PROBATION [1-14]

1. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws at all times, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within ~~five~~ (5) days of occurrence. This provision applies during any period of suspension or any other period of non-practice, in state or out of state.

To ensure compliance with this condition, ~~respondent~~ Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within ~~thirty~~ (30) days of the effective date of the ~~decision~~ Decision, unless the Board determines that fingerprints were previously submitted by the ~~respondent~~ Respondent to the Board.

Respondent shall also submit to the Board a recent 2” x 2” photograph of himself/herself within ~~thirty~~ (30) days of the effective date of the ~~decision~~ Decision.

If ~~respondent~~ Respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions. Respondent shall submit proof of satisfactory completion of any criminal probation or parole that ends after the effective date of the Board’s Decision. Respondent shall submit certified copies of court documents related to the expungement of any conviction(s) if not previously submitted.

2. COMPLIANCE WITH PROBATION PROGRAM

Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of ~~the respondent’s~~ Respondent’s compliance with the Probation Program.

Upon successful completion of probation, ~~the respondent’s~~ Respondent’s license will be fully restored.

3. SUBMIT WRITTEN REPORTS

Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, ~~or~~ declarations and verifications of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to ~~respondent's~~ Respondent's compliance with all the conditions of the Board's Probation Program.

Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, ~~respondent~~ Respondent shall provide a list of all states and territories where he/she has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing or psychiatric technician license during the period of probation.

Respondent shall provide a copy of the Board's ~~decision~~ Decision to the regulatory agency in every state and territory in which he/she has applied for or holds a vocational/practical nurse, psychiatric technician, and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S)

Respondent shall notify the Board, in writing, within ~~five~~ (5) days of any change in address or telephone number(s).

Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE

Respondent shall notify the Board, in writing, within ~~five~~ (5) days, if he/she leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If ~~respondent~~ Respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he/she resides or practices outside of California. ~~The respondent~~ Respondent shall provide written notice to the Board within ~~five~~ (5) days of any change of residency or practice.

Agenda Item #10.B. – Attachment B

Respondent shall notify the Board, in writing, within ~~five (5)~~ days, upon his/her return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S)

Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S)

When currently employed or applying for employment in any capacity in any health care profession, ~~respondent~~ Respondent shall notify his/her employer of the probationary status of ~~respondent's~~ Respondent's license. This notification to the ~~respondent's~~ Respondent's current health care employer shall occur no later than the effective date of the Decision. The ~~respondent~~ Respondent shall notify any prospective health care employer of his/her probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation or Statement of Issues and Disciplinary Decision.

Respondent shall provide to the Board the name(s), physical address(s), mailing address(s), and telephone number(s) of all health care employers and supervisors. Respondent shall complete the required consent forms and sign an agreement with his/her employer(s) and supervisor(s) authorizing the Board and the employer(s) and supervisor(s) to communicate regarding Respondent's work status, performance, and monitoring.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within ~~five (5)~~ days of such an event.

Respondent shall notify the Board, in writing, within ~~five (5)~~ days of any change in employment status. Respondent shall notify the Board, in writing, if he/she is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS

Respondent shall work in his/her licensed capacity in the state of California. This practice shall consist of no less than ~~six (6)~~ continuous months and of no less than ~~twenty (20)~~ hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS

Before commencing or continuing employment in any health care profession, ~~respondent~~Respondent shall obtain approval from the Board of the supervision provided to ~~the respondent~~Respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants, or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation, except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S)

Respondent, at ~~his or her~~his/her own expense, shall enroll and successfully complete ~~a course(s)~~coursework substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board shall notify ~~the respondent~~Respondent of the course content and number of contact hours required. Within ~~thirty (30)~~ days of the Board's written notification of assigned coursework, ~~respondent~~Respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the coursework, ~~respondent~~Respondent shall submit "original" completion certificates to the Board within ~~thirty (30)~~ days of course completion.

11. MAINTENANCE OF VALID LICENSE

Respondent shall, at all times, maintain an active current license with the Board, including any period of suspension.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within ~~two~~ (2) years from the effective date of the Board's ~~decision~~ Decision.

Should ~~respondent~~ Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, ~~respondent's~~ Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. COST RECOVERY REQUIREMENTS

Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$_____.

Respondent shall be permitted to pay these costs in a payment plan approved by the Board with payments to be completed no later than three months prior to the end of the probation period. The filing of bankruptcy by ~~respondent~~ Respondent shall not relieve ~~respondent~~ Respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

If ~~respondent~~ Respondent has not complied with this condition during the probationary period, and ~~respondent~~ Respondent presents sufficient documentation of his/her good faith effort to comply with this condition, and if no other conditions have been violated, the Board or its representatives may, upon written request from ~~the respondent~~ Respondent, extend the probation period up to one year, without further hearing, in order to comply with this condition. During the extension, all original conditions of probation will apply.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

13. LICENSE SURRENDER

During probation, if ~~respondent~~Respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, ~~respondent~~Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate ~~respondent's~~Respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, ~~respondent~~Respondent will no longer be subject to the conditions of probation.

Surrender of ~~respondent's~~Respondent's license shall be considered a disciplinary action and shall become a part of ~~respondent's~~Respondent's license history with the Board. A licensee who surrenders his/her license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary ~~decision~~Decision for the surrender:

- ~~Three (3)~~ years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or
- ~~One (1)~~ year for a license surrendered for a mental or physical illness.

14. VIOLATION OF PROBATION

If ~~respondent~~Respondent violates the conditions of his/her probation, the Board, after giving ~~respondent~~Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (denial/revocation/suspension) of ~~respondent's~~Respondent's license. If during probation, an ~~accusation~~Accusation or ~~petition to revoke probation~~Petition to Revoke Probation has been filed against ~~respondent's~~Respondent's license or the Attorney General's Office has been requested to prepare an ~~accusation~~Accusation or ~~petition to revoke probation~~Petition to Revoke Probation against ~~respondent's~~Respondent's license, the probationary period shall automatically be extended and shall not expire until the ~~accusation~~Accusation or ~~petition~~Petition has been acted upon by the Board.

OPTIONAL CONDITIONS OF PROBATION [15-25]

15. SUSPENSION OF LICENSE

Respondent is suspended from practice as a vocational nurse/psychiatric technician for _____ month(s) (period not to exceed one year) beginning on the effective date of this ~~decision~~Decision.

During suspension, all probation conditions are in full force and effect except those relating to actual practice. The period of suspension will not apply to the reduction of this probationary period. The probation shall be automatically extended for the same time period as the length of suspension.

16. EXAMINATION BY A PHYSICIAN

Within ~~sixty (60)~~ days of the effective date of the Decision, ~~respondent~~Respondent shall submit to a physical examination by a physician of his/her choice who meets minimum criteria established by the Board. The physician must be licensed in California and Board certified in Family Practice, Internal Medicine or a related specialty. The purpose of this examination shall be to determine ability to perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician with a copy of the Board's Disciplinary Order prior to the examination. The cost of such examination shall be paid by ~~the respondent~~Respondent.

Respondent shall cause the physician to submit to the Board a written medical report in a format acceptable to the Board. This report shall be submitted within ~~ninety (90)~~ days of the effective date of the Decision. If the examining physician finds that ~~respondent~~Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board verbally within 24 hours and in writing within ~~five (5)~~ working days. The Board shall notify ~~the respondent~~Respondent in writing of the examining physician's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation.

Respondent shall comply with ~~this condition~~any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance in the manner required by the Board.

17. PSYCHIATRIC/PSYCHOLOGICAL EVALUATION

Within ~~sixty (60)~~ days of the effective date of the Decision, ~~respondent~~Respondent shall submit to a psychiatric/psychological evaluation. The evaluation shall be performed by a psychiatrist licensed in California and Board certified in psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining ~~respondent's~~Respondent's current mental, psychological, and emotional fitness to perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. The cost of such evaluation shall be paid by ~~the respondent~~Respondent.

Respondent shall cause the evaluator to submit to the Board a written report concerning ~~respondent's~~Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted in a format acceptable to the Board within ~~ninety (90)~~ days from the effective date of the Decision.

If the evaluator finds that ~~respondent~~Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board verbally within 24 hours and in writing within five (5)-working days. The Board shall notify ~~the respondent~~Respondent in writing of the evaluator's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with ~~this condition~~any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, ~~respondent~~Respondent shall participate in a therapeutic program at the Board's discretion. The cost of such therapy shall be paid by ~~the respondent~~Respondent.

18. PSYCHOTHERAPY

Within ~~sixty (60)~~ days of the effective date of the Decision, ~~respondent~~Respondent shall submit to the Board the name of one or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional who has been approved by the Board. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first therapy session. Therapy sessions shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. The cost of such therapy shall be paid by the ~~respondent~~Respondent.

Agenda Item #10.B. – Attachment B

Respondent shall cause the therapist to submit to the Board a written report concerning ~~respondent's~~Respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted in a format acceptable to the Board within ~~ninety (90)~~ days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning Respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board.

If the therapist finds that ~~respondent~~Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the therapist shall notify the Board verbally within 24 hours and in writing within five (5) working days. The Board shall notify ~~respondent~~Respondent in writing of the therapist's determination of unfitness to practice and shall order ~~the respondent~~Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with ~~this condition~~any order to cease or restrict his/her practice until the Board is satisfied of ~~respondent's~~Respondent's fitness to practice safely and has so notified ~~the respondent~~Respondent in writing. Respondent shall document compliance with this condition in the manner required by the Board.

19. REHABILITATION PROGRAM

Within ~~thirty (30)~~ days of the effective date of the Decision, ~~respondent~~Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board. Respondent shall submit written verification of successful completion of such treatment in a format acceptable to the Board within ~~thirty (30)~~ days of completion.

Components of the treatment contract shall be relevant to the violation and to ~~the respondent's~~Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol or other identified types of addictive behavior, use of work site monitors, participation in ~~chemical dependency~~addictive behavior rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. The cost for participation in this program shall be paid by ~~the respondent~~Respondent.

20. **~~CHEMICAL DEPENDENCY~~ADDICTIVE BEHAVIOR SUPPORT &
RECOVERY GROUPS**

Within five (5) days of the effective date of the Decision, ~~respondent~~ Respondent shall begin attendance at a ~~chemical dependency~~ an addictive behavior support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group, Al-Anon, Gamblers Anonymous). Verified documentation of attendance shall be submitted by the ~~respondent~~ Respondent with each written report as required by the Board. Respondent shall continue attendance in such a group for the duration of probation.

21. **ABSTAIN FROM CONTROLLED SUBSTANCES**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

22. **ABSTAIN FROM USE OF ALCOHOL AND PRODUCTS CONTAINING ALCOHOL**

Respondent shall completely abstain from the use of alcoholic beverages and products containing alcohol.

23. **SUBMIT BIOLOGICAL FLUID SAMPLES**

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Board and the respondent's current employer.

24. **TAKE AND PASS LICENSURE EXAMINATION**

(Statement of Issues)

Prior to commencing practice, Respondent shall take and pass the licensure exam currently required of new applicants within ~~two~~ (2) years from the effective date of the Board's ~~decision~~ Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until ~~respondent~~ Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Reinstatement of License)

Prior to resuming practice, ~~respondent~~Respondent shall take and pass the licensure exam currently required of new applicants within ~~two~~-(2) years from the effective date of the Board's ~~decision~~Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until ~~the respondent~~Respondent has successfully passed the licensure examination and a license is issued by the Board.

(Current License)

Prior to resuming or continuing practice, ~~respondent~~Respondent shall take and pass the licensure exam currently required of new applicants within ~~two~~-(2) years from the effective date of the Board's ~~decision~~Decision. Respondent shall pay the established examination fees.

This probationary period shall not commence until ~~respondent~~Respondent has successfully passed the licensure examination and notice has been mailed to ~~the respondent~~Respondent by the Board.

25. RESTRICTIONS ON LICENSED PRACTICE

Respondent shall practice only with a specified client population, in a specified practice setting, and/or engage in limited medical procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board.

UNIFORM STANDARDS
FOR SUBSTANCE ABUSING LICENSEES

UNIFORM STANDARDS – REQUIRED
CONDITIONS OF PROBATION [26 -- 28]

26. SUBMIT TO DRUG TESTING

Respondent shall immediately submit to random, observed and directed drug testing, at Respondent's cost, upon request by the Board or its designee. Respondent shall be subject to the frequency of testing specified in Standard 4 of the Substance Abuse Coordination Committee's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. Respondent shall make daily contact as directed by the Board to determine if he/she must submit to drug testing. Respondent shall submit his/her specimen on the same day that he/she is notified that a test is required. All alternative collection sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within 1 business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within 7 days of receipt of the specimen. The Board shall be notified of non-negative test results within 1 business day and shall be notified of negative test results within 7 business days.

There will be no confidentiality in test results. Positive test results will be immediately reported to the Board, Respondent's employer and worksite monitor, if any.

27. POSITIVE DRUG TEST

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation and the Board shall impose the consequences set forth in Major and Minor Violations.

A positive result for a banned substance will result in Respondent being ordered to cease practice and subject his/her license to further disciplinary action.

28. MAJOR AND MINOR VIOLATIONS

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If Respondent commits a major violation, the Board shall order Respondent to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused non-attendance at required meetings;
3. Failure to contact a monitor when required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If Respondent commits a minor violation, the Board shall determine what action is appropriate.

UNIFORM STANDARDS – OPTIONAL
CONDITIONS OF PROBATION [29 -- 31]

29. CLINICAL DIAGNOSTIC EVALUATION

Within 30 days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a financial, personal, or business relationship with the licensee with the last 5 years.

The clinical diagnostic evaluation report shall set forth whether the licensee has a substance abuse problem, is a threat to himself/herself or others, and provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

Any time Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of the evaluation. During such time, Respondent shall submit to random drug testing at a minimum of 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board.

Respondent shall not return to practice until the Board determines that he/she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. In deciding what, if any work limitations will be placed on a license, the Board will consider the factors set forth in SACC Standard No. 6. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. If a license is restricted to less than full-time practice, before requesting a modification to work full time, Respondent shall meet the criteria found in SACC Standard No. 11.

Failure to undergo a clinical diagnostic evaluation when ordered to do so shall subject Respondent's license to further disciplinary action.

30. GROUP MEETINGS WITH QUALIFIED FACILITATOR

Upon recommendation of the clinical evaluator and/or determination by the Board, Respondent shall participate in group support meetings led by a facilitator who meets the following qualifications and requirements:

The meeting facilitator must have a minimum of 3 years experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the State or other nationally certified organization(s).

The meeting facilitator must not have a financial, personal, or business relationship with Respondent in the last 5 years.

The meeting facilitator shall provide to the Board a signed document showing Respondent's name, the group name, the dates and location of the meetings, Respondent's attendance, and Respondent's level of participation and progress.

The meeting facilitator shall report within 24 hours any unexcused absence to the Board.

31. WORKSITE MONITOR

Respondent shall submit the name of a proposed worksite monitor within 30 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding Respondent and the worksite monitor's requirements and reporting responsibilities as specified in Standard 7 of the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011) established by the Substance Abuse Coordination Committee. If the worksite monitor terminates the agreement with Respondent and/or the Board, Respondent shall not practice until another worksite monitor is approved in writing by the Board.

(Revised 6/19/07~~6/20/11~~; Effective [insert date])

~~BVNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[June 20, 2011]; Effective October 29, 2008[date])~~

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
1. Unprofessional Conduct	2878(a)	4521(a)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
2. Incompetence and/or Gross Negligence	2878(a)(1)	4521(a)(1)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
3. Conviction of Practicing Medicine	2878(a)(2)	4521(a)(2)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 2524
4. False or Misleading Advertising	2878(a)(3)	4521(a)(3)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
5. Excessive Force, Mistreatment or Abuse of Any Patient	2878(a)(4)	4521(i)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 2524 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 * Restricted Practice 2524 *Other Conditions
6. Failure to Maintain Confidentiality of Patient Medical Information	2878(a)(5)	4521(k)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
7. Failure to Report Commission of Act Prohibited by Section	2878(a)(6)	4521(l)	Revocation	Revoc. Stayed: 3 Years Standard Conditions 1-14	Revoc. Stayed: 2 Years Probation Standard Conditions 1-14

~~VNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[June 20, 2011]; Effective October 29, 2008[date])~~

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
8. Procuring a License by Fraud or Misrepresentation	2878(b)	4521(b)	---	---	Revocation
9. Assisting With Criminal Abortion	2878(c)	4521(c)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14
10. Violating Terms of Licensing Chapter	2878(d)	4521(d)	Revocation	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
11. Making False Statement on Application for Initial License	2878(e)	4521(e)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions
12. CONVICTION Substantially Related to Functions of License (Non-Drug Related)	2878(f)	4521(f)	Revocation or Denial of License	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice <u>§24</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions
13. Impersonating or Acting as Proxy for Applicant on Exams	2878(g)	4521(g)	---	---	Revocation or Denial of License
14. Impersonating a Licensee or Permitting Others to Use License	2878(h)	4521(h)	Revocation or Denial of License	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions

BVNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised ~~June 19, 2007~~ [June 20, 2011]; Effective ~~October 29, 2008~~ [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
15. Assisting Physician to Violate Medical Practice Act	2878(i)	4521(j)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 25 <u>24</u>	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
16. Commission of Any Act Involving Dishonesty	2878(j)	4521(n)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 25 <u>24</u>	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
17. Sexual Misconduct Related to Practice	2878(k)	4521(m)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 25 <u>24</u>	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
<u>18. Sexual Misconduct Related to Practice</u>	<u>2878(k)</u>	<u>4521(m)</u>	---	---	<u>Revocation (Required by 16 C.C.R. §2524(c) [VN] and 16 C.C.R. §2579.10(c) [PT])</u>
18<u>19</u>. Knowing Failure to Follow Infection Control Guidelines	2878(l)	4521(o)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Restricted Practice 25 <u>24</u>	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
19<u>20</u>. Failure to Report Known Violations	2878.1	4521.2	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
20<u>21</u>. Illegal Possession, Prescribing, Self-Administration of Controlled Substances or Dangerous Drugs	2878.5(a)	4521(a)(4)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions

BVNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised June 19, 2007[June 20, 2011]; Effective October 29, 2008[date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
2122. Illegal Use of Drugs/Alcohol Posing Danger to Public & Impairs Ability to Practice	2878.5(b)	4521(a)(5)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician 16 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 Restricted Practice 25 24 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions
2223. CONVICTION of Drug or Alcohol Related Crimes	2878.5(c)	4521(a)(6)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 Restricted Practice 25 24 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Screens 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions

BVNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised ~~June 19, 2007~~ [June 20, 2011]; Effective ~~October 29, 2008~~ [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
<u>23</u>24. Confinement or Committal for Addiction	2878.5(d)	4521(a)(7)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Exam by Physician 16 Support/Recovery Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Testing 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Psychiatric/Psychological Evaluation 17 *Psychotherapy 18 *Drug/Alcohol Rehab. 19 <u>*Rehab Program 19</u> *Restricted Practice 25 <u>*Diagnostic Evaluation 28</u> <u>*Qualified Group Meetings 29</u> <u>*Worksite Monitor 30</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 Support Groups 20 Abstain from Drugs 21 Abstain from Alcohol 22 Drug Screens 23 <u>Drug Testing 25</u> <u>Positive Drug Tests 26</u> <u>Major/Minor Violations 27</u> *Other Conditions
<u>24</u>25. Falsify, Make Incorrect, Inconsistent or Unintelligible Entries Pertaining to Drugs	2878.5(e)	4521(a)(8)	---	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 Drug Screens 23 <u>*Drug Testing 25</u> <u>*Positive Drug Tests 26</u> <u>*Major/Minor Violations 27</u> *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

BVNPT: VIOLATIONS & RECOMMENDED DISCIPLINARY ACTIONS (Revised ~~June 19, 2007~~ [June 20, 2011]; Effective ~~October 29, 2008~~ [date])

Disciplinary Violations	VN Program B&P Code	PT Program B&P Code	Maximum Discipline	Intermediate Discipline	Minimum Discipline
2526. Disciplinary Action by Another State, Agency or Licensing Board	2878.8	4521.6(a)	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14
2627. Failure to Report Child, Elder or Dependent Adult Abuse (Unprofessional Conduct)	2878(a) CCR 16 2520.1 2520.2 2520.3	4521(a) CCR 16 2577.2 2577.3 2577.4	Revocation	Revoc.Stayed: 3 Years Probation Standard Conditions 1-14 *Other Conditions	Revoc.Stayed: 2 Years Probation Standard Conditions 1-14 *Other Conditions

Important Notes:

- Conditions of Probation 1 through 14 are standard conditions of probation. The Board requests these standard conditions of probation be imposed on all disciplinary cases resulting in probation.
- Conditions of Probation 15 through 24 are optional conditions of probation, which address specific circumstances of a case.
- Conditions of Probation 25 through 27 must be imposed as conditions of probation for all substance-abusing licensees.
- Conditions of Probation 28 through 30 must be considered for all substance-abusing licensees and, if the circumstances of the case warrant, shall be imposed as probation conditions.

If individual circumstances exist which justify omissions or deviations from these guidelines, the Board requests that this information be duly noted in the Proposed Decision issued by the Administrative Law Judge hearing the case. This will help the Board to better evaluate the Proposed Decision and to make an official Decision which accurately reflects the facts of each specific disciplinary matter.

* ~~Optional~~ Other Conditions of Probation may be added based upon the underlying cause of discipline.

(Revised ~~6/19/07~~ 6/20/11; Effective [insert date])

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011

Substance Abuse Coordination Committee

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Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

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Lori Hubble
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Richard De Cuir
Dental Board of California

Linda Whitney
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
**Board of Vocational Nursing and
Psychiatric Technicians**

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
**Speech-Language Pathology & Audiology &
Hearing Aid Dispenser Board**

Susan Geranen
Veterinary Medical Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;

- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Agenda Item #10.B. – Attachment D

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held:

Date: September 6, 2011

Time: 10:00 a.m.

Board for Professional Engineers & Land Surveyors
2535 Capitol Oaks Drive, 3rd Floor Conference Room
Sacramento, California 95833

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 P.M. on **September 5, 2011**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for fifteen (15) days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2854 and 4504 of the Business and Professions (B&P) Code and section 11425.50(e) of the Government Code; and to implement, interpret or make specific sections 315, 315.2, 315.4, 475, 729, 2875, 2876, 2878, 4520, and 4521 of said Code, as well as sections 11400.20, 11400.25.50(e) and 11500 of the Government Code and section 44010 of the Education Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board's highest priority is protection of California consumers. B&P Code sections 2841.1 of the Vocational Nursing (VN) Practice Act and 4501.1 of the Psychiatric Technician (PT) law mandate that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensed vocational nurses and psychiatric technicians. The Board is authorized to discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

B&P Code section 2854 (VN) and section 4504 (PT) authorize the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Vocational Nursing Practice Act and the Psychiatric Technicians Law.

Government Code Section 11425.50(e) requires that a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule subject to Chapter 3.5 (commencing with Section 11340) unless it has been adopted as a regulation pursuant to Chapter 3.5 (commencing with Section 11340).

The Board established its Disciplinary Guidelines to facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known. The Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

Amend Sections 2524 (VN) and 2579.10 (PT)

B&P Code section 315 (Senate Bill 1441, Chapter 548, Statutes of 2008) established a Substance Abuse Coordination Committee (SACC) to develop uniform standards for substance-abusing healing arts licensees. In April 2011, the SACC adopted sixteen uniform standards for use by all healing arts boards.

This proposal would amend Section 2524 (VN) and 2579.10 (PT) to incorporate by reference the new guidelines entitled "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" (Rev. 6/20/11) to implement the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees. The proposed amendments will update and clarify the Board's recommended disciplinary orders and conditions of probation and include non-substantive, technical changes for grammatical and general clean up.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. By way of its impact on the available workforce, the proposed regulatory action only affects relatively few individual licensees who may be unable to practice safely due to substance abuse, who are sex offenders or who have otherwise violated the Board's laws. It will require individuals found to be substance-abusing to comply with evaluation and testing requirements.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This proposal will only have an impact on licensees or applicants disciplined by the Board.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects licensed vocational nurses, licensed psychiatric technicians, and applicants for licensure.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833 or on the Board's website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Linda Ruyters, Administrative Analyst
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No: (916) 263-7845
Fax No: (916) 263-7859
E-Mail Address: linda.ruyters@dca.ca.gov

The backup contact person is:

Name: Marilyn Kimble, Enforcement Program Manager
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No: (916) 263-2042
Fax No: (916) 263-7857
E-mail Address: marilyn.kimble@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bvnpt.ca.gov

Agenda Item #10.B. – Attachment E

Board of Vocational Nursing and Psychiatric Technicians

INITIAL STATEMENT OF REASONS

Hearing Date: September 6, 2011

Subject Matter of Proposed Regulations:

Disciplinary Guidelines and Uniform Standards Related to Substance Abuse

Sections Affected:

Vocational Nursing (VN):	Amend Title 16, C.C.R., Section 2524
Psychiatric Technician (PT):	Amend Title 16, C.C.R., Section 2579.10

Introduction

The Board of Vocational Nursing and Psychiatric Technician's (Board) highest priority is protection of California consumers. Business and Professions (B&P) Code sections 2841.1 (VN) and 4501.1 (PT) mandate that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensed vocational nurses and psychiatric technicians. The Board is authorized to investigate and discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

In September 2008, Senate Bill 1441 (Chapter 548, Statutes of 2008) was enacted to establish within the Department of Consumer Affairs a Substance Abuse Coordination Committee (SACC). The SACC was charged with the task of developing uniform standards in sixteen specific areas for use in dealing with substance-abusing healing arts licensees. In April 2011, the SACC adopted sixteen uniform standards for use by all healing arts boards.

Pursuant to Government Code Section 11425.50(e), a penalty in an administrative disciplinary action may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation.

Specific Purpose

The Board's Disciplinary Guidelines (Guidelines), were last revised June 19, 2007, and were incorporated by reference as regulations effective October 29, 2008. In keeping with its mandate and strategic plan to protect the public interest, the Guidelines need to be amended to reflect current law and practice relative to recommended discipline for administrative disciplinary actions. In addition to the Guidelines, Uniform Standards (Standards) are incorporated into the document for substance-abusing licensees and to provide consistency and clarity when disciplining substance abusing licensees.

This proposal will amend Sections 2524 (VN) and 2579.10 (PT) to incorporate by reference the “Disciplinary Guidelines and Uniform Standards Related to Substance Abuse” as revised on June 20, 2011. Changes to the Guidelines and Standards are explained in detail in the Factual Basis below.

Amendments to Sections 2524 (a) and 2579.10 (a) are made to clarify that aggravating factors may provide a basis for deviating from the disciplinary guidelines and better explain the factors considered when disciplining a licensee.

Amendments to Sections 2524 (b) and 2579.10 (b) are made to create a rebuttable presumption that a licensee is a substance-abusing licensee for purposes of section 315 if the conduct found to be a violation of the Board’s laws involves the use of drugs, alcohol, or both. It further provides that if the licensee is a substance abuser, the Uniform Standards Related to Substance Abuse (Standards) apply unless the licensee establishes that, in his or her particular case, public protection can be satisfied with a modification or omission of a specific standard. The purpose of this provision is to explain when the Standards apply.

Amendments to Sections 2524 (c) and 2579.10 (c) are made to require that a proposed decision issued pursuant to the adjudicative provisions of the Administrative Procedure Act, wherein a licensee is found to have engaged in any act of sexual misconduct, as specified, must contain an order revoking the license. It further provides that the order of revocation may not be stayed. The purpose of this provision is to establish what the board believes is the appropriate consequence for a licensee who has engaged in a specified act of sexual misconduct. It is necessary to protect the public by prohibiting such licensees from holding a license.

Factual Basis

The Board established its Guidelines to facilitate uniformity of disciplinary orders and to ensure that its disciplinary policies are known. The Guidelines are intended for use by individuals involved in disciplinary proceedings against vocational nurse and psychiatric technician licensees or applicants, including administrative law judges and attorneys, as well as the Board members who review proposed decisions and stipulations and have ultimate authority to make final decisions.

This proposal will incorporate by reference the Board’s Guidelines (as revised 6/2011) into Section 2524 (VN) and 2579.10 (PT). As explained in detail below, the Guidelines document has been expanded to apply Uniform Standards (Standards) to the Board’s disciplined licensees. These standards were derived from the SACC’s Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011). The proposed amendments to the Guidelines and Standards will also update and clarify the Board’s recommended disciplinary orders and conditions of probation and include non-substantive, technical changes for grammatical and clean up purposes. The following describes those changes in detail and provides a rationale for the proposed amendments.

Amend the Cover, Table of Contents, and Introduction (pages i-ii)

These amendments are needed to update and clarify the intent of the Guidelines and to accurately reflect the proposed changes which include the Standards that apply to healing arts licensees.

Amend Regulatory Authority (page iii)

The specific purpose of this amendment is to reference the regulatory authority as it will appear once these regulations are amended. The effective dates will be inserted into the Guidelines once the regulations are officially amended. As noted above, the proposed amendments to the regulations add the presence of aggravating factors as a reason for deviation from the Guidelines and define what the Board will presume to be a substance-abusing licensee for purposes of section 315 of the B&P Code. The proposed amendments also specify that, if a licensee is found to have had sexual contact with a patient or has been convicted of a sex offense as defined, a proposed decision must contain an order to revoke a license and may not contain an order staying the revocation.

The proposal specifies that the Uniform Standards apply to a substance-abusing licensee. A licensee shall be presumed to be a substance-abuser if his/her misconduct involves the use of drugs and/or alcohol. The proposal specifies that, if the licensee does not rebut the presumption, the Uniform Standards shall apply unless the licensee establishes that appropriate public protection can be provided with modification or omission of a specific standard as a term of probation.

The proposal would also require an Administrative Law Judge (ALJ) to issue a proposed decision revoking a license without an order to stay the revocation when the licensee is found to have engaged in any act of sexual contact as defined in subdivision (c) of section 729 of the B&P Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code. Due to the seriousness of sex offenses and sexual misconduct and the potential threat to consumers that sexual offenders pose, the Board has determined that revocation of a license is the appropriate disciplinary action in any disciplinary matter where there is a finding that the licensee engaged in sexual contact with a patient or was convicted of a sex offense. The regulatory proposal ensures that ALJs render proposed decisions consistent with the Board's determination in these matters.

Amend Factors To Be Considered (page iv)

The specific purpose of this amendment is to update the factors that should be considered in determining whether discipline should be imposed. This proposed amendment adds aggravating evidence as a factor and is needed to accurately reflect the proposed changes to the regulation.

Amend Summary Lists of Standard and Optional Conditions of Probation (pages v - vi)

The Summary Lists of Standard and Optional Conditions of Probation were updated to accurately reflect the conditions listed on pages 1-11 of the proposed Guidelines. This proposed amendment clarifies that standard conditions of probation 1-14 generally appear in all cases involving probation and that optional conditions of probation 15-25 address specific circumstances of a case. Non-substantive, technical changes were also made for clean up.

Add Summary Lists of Uniform Standards – Conditions of Probation (page vii)

The Summary Lists of Uniform Standards – Conditions of Probation were added to reflect the Standards accurately summarize the conditions listed on pages 12-15 of the proposed Uniform Standards Related to Substance Abuse. This proposed amendment specifies that Uniform Standards 26-28 must be imposed as conditions of probation for substance-abusing licensees and Uniform Standards 29-31 must be considered and, if warranted, must be imposed as probation conditions.

Amend Standard Conditions of Probation (pages 1-6)

1. ObeY all Laws

The specific purpose of this amendment is to clarify the respondent's responsibility to obey all laws at all times including any period of suspension, when not practicing, whether or not the licensee is in- or out-of-state. This amendment also clarifies that a respondent is required to submit proof of satisfactory completion of any criminal probation or parole ending after the effective date of the Board's Decision. It also specifies that a respondent must submit certified copies of court documents related to the expungement of any conviction if not previously submitted to the Board. Non-substantive, technical changes were also made for clean up.

It is the responsibility of all licensees to be lawful. The Board must ensure that the respondent clearly understands that all violations of any law must be reported to the Board and that the respondent must comply with criminal penalties while on probation. Documented proof of compliance is needed and this amendment clarifies that the licensee is responsible for submitting proof of completion of criminal probation or parole and/or expungement of any conviction.

2. Compliance with Probation Program

Non-substantive changes were made to this condition for grammatical and clean up purposes.

3. Submit Written Reports

Non-substantive changes were made to this condition for grammatical and clean up purposes.

4. Notification of Address and Telephone Number Change(s)

Non-substantive changes were made to this condition for grammatical and clean up purposes.

5. Notification of Residency or Practice Outside of State

Non-substantive changes were made to this condition for grammatical and clean up purposes.

6. Meetings with Board Representative(s)

No changes were made to this condition.

7. Notification to Employer(s)

The specific purpose of this amendment is to clarify the licensee's responsibility to provide the name, physical address, mailing address, and telephone number of all health care employers or supervisors. This proposed amendment specifies that the respondent must complete required consent forms and sign an agreement with his/her employer and supervisor to authorize the Board and the employer/supervisor to communicate regarding the respondent's work status, performance, and monitoring. This proposal also complies with the SACC's Uniform Standard No. 3.

It is the responsibility of the respondent to inform the Board of his/her employment status. The Board must have the ability to contact the respondent's employer at any time to determine if the respondent is complying with the conditions of probation and that the respondent is practicing safely. This amendment will clarify the respondent's responsibility in obtaining employer involvement in order to comply with the probation program. Although this amendment complies with SB 1441 regarding substance-abusing licensees, the Board inserted the proposed language in

this standard condition of probation rather than under the Uniform Standards section on pages 12-13 to clarify that this applies to all licensees on probation, not just substance-abusing licensees. It is anticipated that this provision will be helpful in monitoring all probationers, not just the substance-abusing ones.

8. Employment Requirements and Limitations

Non-substantive changes were made to this condition for grammatical and clean up purposes.

9. Supervision Requirements

Non-substantive changes were made to this condition for grammatical and clean up purposes.

10. Completion of Educational Course(s)

Non-substantive changes were made to this condition for grammatical and clean up purposes.

11. Maintenance of Valid License

Non-substantive changes were made to this condition for grammatical and clean up purposes.

12. Cost Recovery Requirements

Non-substantive changes were made to this condition for grammatical and clean up purposes.

13. License Surrender

Non-substantive changes were made to this condition for grammatical and clean up purposes.

14. Violation of Probation

Non-substantive changes were made to this condition for grammatical and clean up purposes.

Amend Optional Conditions of Probation (pages 7-13)

15. Suspension of License

Non-substantive changes were made to this condition for grammatical and clean up purposes.

16. Examination by a Physician

The specific purpose of this amendment is to clarify that the physician who conducts the examination of the licensee must notify the Board verbally within 24 hours if the licensee is not physically fit to practice safely. This proposed amendment also clarifies that the licensee must comply with any order to cease or restrict his/her practice until the Board is satisfied that the licensee is safe to return to practice and the licensee has been notified in writing by the Board. Non-substantive changes were also made to this condition for grammatical and clean up purposes.

This proposal will enhance consumer protections because it ensures that notice is quickly provided to the Board regarding a licensee who may pose a serious threat to consumers if the evaluator determines that the licensee is physically unfit to practice safely. It also clarifies that the licensee must comply with any order to cease or restrict practice.

17. Psychiatric/Psychological Evaluation

The specific purpose of this proposed amendment is to clarify that the evaluator who conducts the psychiatric/psychological evaluation of the licensee must notify the Board verbally within 24 hours if the licensee is not psychologically fit to practice safely. This proposed amendment also clarifies that the licensee must comply with any order to cease or restrict his/her practice until the Board is satisfied that the licensee is safe to return to practice and the licensee has been notified in writing by the Board. Non-substantive changes were also made to this condition for grammatical and clean up purposes.

This proposal will enhance consumer protections because it ensures that notice is quickly provided to the Board regarding a licensee who may pose a serious threat to consumers if the evaluator determines that the licensee is not psychologically fit to practice safely. It also clarifies that the licensee must comply with any order to cease or restrict practice.

18. Psychotherapy

The specific purpose of this amendment is to clarify that the therapist who provides psychotherapy to the licensee must notify the Board verbally within 24 hours if the licensee is not psychologically fit to practice safely. This proposed amendment also clarifies that the licensee must comply with any order to cease or restrict his/her practice until the Board is satisfied that the licensee is safe to return to practice and the licensee has been notified in writing by the Board. Non-substantive changes were also made to this condition for grammatical and clean up purposes.

This proposal will enhance consumer protections because it ensures that notice is quickly provided to the Board regarding a licensee who may pose a serious threat to consumers if the therapist determines that the licensee is not psychologically fit to practice safely. It also clarifies that the licensee must comply with any order to cease or restrict practice.

19. Rehabilitation Program

The specific purpose of this amendment is to clarify that a rehabilitation treatment program may have components that include abstention from any identified type of addictive behavior. Non-substantive changes were also made to this condition for grammatical and clean up purposes.

20. Addictive Behavior Support Groups

The specific purpose of this amendment is to clarify that this condition includes addictive behavior support groups and is not limited to support or recovery groups that only address chemical dependency. Non-substantive changes were also made to this condition for grammatical and clean up purposes.

21. Abstain from Controlled Substances

No changes were made to this condition.

22. Abstain from Use of Alcohol and Products Containing Alcohol

Non-substantive changes were made to this condition for grammatical and clean up purposes.

23. Submit Biological Fluid Samples

No changes were made to this condition.

24. Take and Pass Licensure Examination

Non-substantive changes were made to this condition for grammatical and clean up purposes.

25. Restrictions on Licensed Practice

No changes were made to this condition.

Add Uniform Standards Related to Substance Abuse – Required Conditions of Probation (pages 12-13)

26. Submit to Drug Testing

The specific purpose of this proposed amendment is to comply with the SB 1441. The proposed amendment specifies that the licensee shall be subject to the frequency of testing established in No. 4 of the Uniform Standards.

Uniform Standard No. 4 established by the SACC (April 2011) includes a testing frequency schedule. The Uniform Standards require each licensee to be tested randomly as follows:

Level I – The range of random drug tests required for each licensee during the first year of probation is a minimum range of 52-104.

Level II – The range of random drug tests required for each licensee during the second year of probation and thereafter, up to 5 years, is a minimum range of 36-104.

The minimum number of tests provided will help to identify relapse and allow for licensees to be randomly tested. Nothing precludes the Board from increasing the number of random tests for any reason.

The Uniform Standards also provide five exceptions to the testing frequency schedule summarized as follows:

1. Previous Testing/Sobriety – In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.
2. Violation(s) Outside of Employment – An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor and those violations did not occur at work or on the way to work, may bypass Level I of the testing frequency schedule.
3. Not Employed in Health Care Field – A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing or working in any health care field. Prior to returning to any health care employment, the licensee shall be subject to Level I testing frequency for at least 60 days.
4. Tolling – A board may postpone all testing for any person whose probation is placed on tolling status if the overall probation period is also tolled.
5. Substance Use Disorder Not Diagnosed – In cases where no current substance use disorder is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

The exceptions provide the Board flexibility to determine testing frequency on a case by case basis. Further, the standard is broad enough to allow the Board to determine on a case-by-case basis if a licensee should be required to submit a specimen more quickly, e.g. before 10:00 a.m. or within 6 hours notice.

Many of the standards specific to testing collection and specimen handling are consistent with or based upon the guidelines established by the U.S. Department of Transportation. Requiring the certification of laboratories through the National Laboratories Certification program ensures consistent handling and processing of test results.

Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to “flush” their system overnight. Further, the established certification of the laboratory will include creatine and pH levels, which can be a sign of a licensee “flushing” their system.

27. Positive Drug Test

The specific purpose for this proposed amendment is to address the provisions of Nos. 8 and 9 of the SACC’s Uniform Standards. The proposed amendment specifies that, a licensee has committed a major violation if the Board confirms that a licensee tested positive for the use of a prohibited substance. The Board shall impose consequences set forth in the probation condition which defines Major and Minor Violations. A positive result for a banned substance will result in the Board ordering the licensee to cease practice.

Protection of the public is the Board’s highest priority in exercising its licensing, regulatory and disciplinary functions. In order to meet this mandate, it is appropriate for the licensee to cease practice if a major violation occurs, and refer the matter for further action.

28. Major and Minor Violations

The specific purpose of this proposed amendment is to address SACC’s Uniform Standard No. 10. This proposed amendment defines major and minor violations as follows:

Major violations include, but are not limited to:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to submit to drug testing when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board shall order the licensee to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor violations include, but are not limited to:

1. Failure to submit required documentation in a timely manner;

2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board shall determine what action is appropriate

Protection of the public is the Board's highest priority in exercising its licensing, regulatory and disciplinary functions. In order to meet this mandate, it is appropriate for the Board to order the licensee to cease practice, if a major violation occurs, and refer the matter for further action. It is also appropriate for the Board to determine the appropriate action for a minor violation. This proposed amendment clarifies the types of violations that fall within each category.

Add Uniform Standards Related to Substance Abuse – Optional Conditions of Probation (pages 14-15)

29. Clinical Diagnostic Evaluation

The specific purpose of this proposed amendment is to address SACC's Uniform Standards Nos. 1, 2, 6 and 11. The proposed amendment specifies that, if a licensee is ordered to undergo a clinical diagnostic evaluation, the Board shall order the licensee to cease practice for a minimum of 30 days pending the results of the evaluation. The licensee shall submit to random drug testing during this time at a minimum of 2 times per week. The licensee shall also cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation is complete unless an extension, not to exceed 30 days, is granted by the Board.

A clinical diagnostic evaluation would not be necessary in a situation where there is demonstrable immediate threat to the public safety and/or where violations are so egregious (e.g. crimes in addition to substance abuse, patient harm/death) that the Board would not allow the licensee to practice under any circumstances; thus, the Board would seek revocation instead of permitting rehabilitation or treatment.

This proposal will increase consumer protection by specifying requirements for a clinical diagnostic evaluation of a licensee and timeframes for completion of the evaluation; required qualifications for providers evaluating the licensee; ensuring that the Board is notified quickly if the licensee is a threat; setting forth minimum standards for clinical diagnostic evaluations; ensuring evaluations are conducted in accordance with applicable best practices while allowing the evaluator discretion; providing for a professional opinion as to whether the licensee has a substance abuse problem; and prohibiting personal, financial and business relationships between the evaluator and licensee ensuring objectivity in assessments. It also describes the factors it will consider in imposing conditions on practice and explains the requirements for a restricted practice to be lifted.

Obtaining expert recommendations for treatment and practice restrictions ensures that licensees who have undergone treatment and have taken steps towards recovery can safely return to practice.

30. Group Meetings with Qualified Facilitator

The specific purpose of this amendment is to address with the uniform standard No. 5 established by the SACC. The proposed amendment specifies that, if the Board requires a licensee to participate in facilitated group support meetings, the group must be led by a facilitator who has a minimum of 3 years experience in the treatment and rehabilitation of substance abuse and shall by license or certified by the State or other nationally certified organization(s). The facilitator must

not have a financial, personal, or business relationship with the licensee within the last 5 years. The meeting facilitator must provide a signed document showing the licensee's name, group name, dates and location of meetings, licensee's attendance, level of participation, and progress. Unexpected absences must be reported to the Board by the facilitator within 24 hours.

Specifying the requirements for facilitated group support meetings for the treatment of substance abuse ensures that licensees who have undergone treatment and have made steps towards recovery can safely practice. It also assists the Board in obtaining consistent and reasonably reliable information from monitors.

31. Worksite Monitor

The specific purpose of this proposed amendment is to address SACC's Uniform Standard No. 7. The proposed amendment specifies that, if the Board determines that supervised practice is necessary for a particular licensee, the licensee must submit the name of the proposed monitor within 30 days of the effective date of the Board's decision. The licensee must complete any required forms and sign an agreement with the worksite monitor and the Board. If the worksite monitor terminates the agreement with the Board and/or licensee, the licensee shall not practice until another worksite monitor is approved in writing by the Board.

The monitor's role is to monitor a licensee who is chemically impaired and to ensure that the licensee is not abusing drugs and/or alcohol. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and by identifying changes in the licensee's behavior that may be cause to suspect current substance abuse. Implementing this standard would provide ongoing documentation of the licensee's behavior to ensure public safety and provide immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol.

Amend Violations & Recommended Disciplinary Actions (pages 16-21)

The specific purpose for this amendment is to update the table of Violations & Recommended Disciplinary Actions to accurately reflect the proposed changes to the Disciplinary Guidelines and Uniform Standards Related to Substance Abuse. The proposed amendments ensure that the table is consistent with the proposed changes to the regulations by this action (requiring revocation for sexual misconduct) and the Guidelines as modified.

Underlying Data

- Senate Bill 1441 (Ridley-Thomas)
- SB 1172 (Negrete McLeod)
- Disciplinary Guidelines and Uniform Standards Related to Substance Abuse (As amended June 20, 2011)
- SACC's Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011)
- Minutes of the February 25, 2011, Board Meeting and Board Meeting Report

Business Impact

The regulation will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment

These regulations do not mandate the use of special technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

(7/12/11)